

**MACKINAC STRAITS CORRIDOR AUTHORITY (MSCA)  
PUBLIC MEETING**

June 2, 2021 – 1:00 pm

Virtual Meeting (<https://youtu.be/aRAa-0zjsCl>)

**MEETING MINUTES**

Members Present:     Mike Nystrom, MSCA  
                              Anthony England, MSCA

Members Absent:     Paul Novak, MSCA

Also Present:         Raymond Howd, Assistant Attorney General to MSCA  
                              Dr. Mike Mooney, Consultant to MSCA  
                              Peter Holran, Enbridge  
                              Aaron Dennis, Enbridge  
                              Guy Krepps, Enbridge  
                              Monica Monsma, MDOT  
                              James Lake, MDOT  
                              Corey Petee, MDOT  
                              Ryan Mitchell, MDOT  
                              Cindy Robinson, MDOT  
                              Amy Matisoff, MDOT  
                              Jacob Ball, MDOT  
                              David McCartney, PFN  
                              Scott Randall, PFN

**I.     WELCOME/Call to Order**

Monica Monsma opened the meeting at 1:02 p.m. and welcomed attendees and guests.

**OPENING STATEMENT/INTRODUCTION**

Mackinac Straits Corridor Authority (MSCA) Chairman Michael Nystrom introduced himself from Okemos, Michigan, Ingham County, and welcomed attendees to the meeting.

Chairman Nystrom outlined the virtual meeting public comment function, stating that comments have been received in advance of the meeting and reviewed by the Authority. Meeting related information was posted in advance on the website and made available publicly. A public comment form was made available for use. All comments sent before 11 am were provided to the Authority. Public comments will be limited to three minutes, with MDOT staff monitoring time, and anyone going over the time allowable will be given a notification. All comments will be part of the public record of this meeting.

**II.    REVIEW OF AGENDA**

Chairman Nystrom called for a Motion to Approve Agenda. Motion by Anthony England. Seconded by Chairman Nystrom. 2 ayes, 0 nays. Motion carried. MSCA Member Dr.

Anthony England introduced himself, stating he was attending from Superior Township, Washtenaw County, Michigan.

### **III. REVIEW OF PREVIOUS MINUTES**

Chairman Nystrom called for Motion to Approve February 3, 2021 Meeting Minutes. Member England noted under the first paragraph, last sentence, it was incomplete and should include a broader statement. Chairman Nystrom agreed and noted it should be broadened to include representing the interest of the State of Michigan as well as the scope that is listed in the law for design, construction, operations, and maintenance. Motion by Anthony England to accept the minutes as amended. Seconded by Chairman Nystrom. 2 ayes, 0 nays. Motion carried.

### **IV. OLD BUSINESS**

None.

### **V. NEW BUSINESS**

1. Welcome new Authority Member Paul Novak  
Governor Whitmer has appointed Paul Novak to the Authority. Although unavailable to attend this meeting, Member Novak is looking forward to joining the Authority.
2. Raymond O. Howd to continue representing the Authority as Special Assistant Attorney General (SAAG)  
Raymond Howd is well versed in the legal challenges, progress, and activities of the Authority, and has signed an agreement for his continued representation for the MSCA. Raymond Howd, Haslett, Michigan, Ingham County, introduced himself and stated he has represented the Authority since the beginning of 2020, and with his previous knowledge of the Authority, it was logical for him to continue representing the Authority.
3. Update on Michigan Public Service Commission (MPSC) Proceedings – Raymond O. Howd, Special Assistant Attorney General  
At the February 3, 2021 meeting Raymond O. Howd gave an update on the MPSC proceedings. Since that meeting the Public Service Commission (PSC) has remanded the ruling on an evidentiary hearing that Enbridge had filed trying to better define the scope of the PSC hearing. The Administrative Law Judge (ALJ) made a decision that went up to the PSC who remanded it back to the ALJ to consider what if any, circumstances had occurred or might affect the proofs in the proceedings given the Governors notice of rescission of the easement that Enbridge was utilizing for the current dual-line pipelines on the bottom of the Straits. The ALJ made the determination effectively finding that would have no bearing on the outcome or proofs of these proceedings. It then went back up to the PSC on appeal and on April 21, 2021 in a 75-page opinion the PSC affirmed the decision of the ALJ, in all respects but one. The PSC held that the parties were free to introduce evidence of greenhouse gases

increases related to the four-mile segment of the tunnel project. The Tribal Intervenor filed a joint petition for a rehearing urging the PSC to allow evidence of leaks or spills on the entire 465 miles of Line 5 which is pending. It is unknown when a decision on this will occur. The ALJ has issued a new scheduling order that the Intervenor's written expert testimony will now be due on September 14, 2021, and rebuttal written testimony due on December 14, 2021. The ALJ scheduled cross-examination hearing dates of January 13-14, 18-21, and 24-25, 2022, with briefing due March 2022. It is unknown when the PSC will issue a final determination on Enbridge's permit, but it likely will not occur before spring of 2022.

**4. Recent Tribal Consultation Outreach Discussions**

Bay Mills Tribal President Whitney Gravelle requested a consultation meeting with the Authority. Chairman Nystrom, Special Assistant Attorney General, Raymond O. Howd, Ryan Mitchel, MDOT, along with other MDOT staff and Tribal Community members met to share information, ideas, and express concerns. The MSCA has committed to working together to move forward with some form of a consultation meeting. MDOT currently has a consultation agreement template, and the Authority would like to use that as a guidance document for the Tribal Community to ask questions and give input as MDOT guides the Authority through the process. The Tribal Community members have been invited to give presentations at future Authority meetings starting in October to discuss issues of concern. Ryan Mitchell, from DeWitt, Michigan, Clinton County, stated as Authority staff, there is a commitment to comply with Executive Order 2019-17 which outlines the law relating to Tribal Consultation. Raymond O. Howd noted the existing MDOT policy includes requirements that are broader than what the Authority is charged with under statute and recommended the Authority develop its own policy through the MDOT Tribal Liaison since under statute, all the Authority's administrative functions are to be performed under the direction and supervision of MDOT. He recommends the Authority develop a separate policy that is limited to its statutory duties and roles and incorporate the requirements of Executive Order 2019-17, specifically the steps regarding the consultation process and how those will be carried out. Raymond O. Howd will draft language for the Authority to consider at the October meeting, where it may be voted on for approval. Amy Matisoff, Tribal Liaison for MDOT, Traverse City, Michigan, Grand Traverse County, noted agreement on the proposed plan of action, and will be assisting Mr. Howd in the drafting process.

**5. Summary of Utility Tunnel Project Activity, Progress, and Status – Enbridge Energy**

Peter Holran, Director of Government Relations for Enbridge, from Washington, D.C. gave an overview of the Great Lakes Tunnel Project (GLTP). The Tunnel Project is an opportunity to modernize energy, infrastructure; not only in Michigan but throughout the entire region, with the goal of protecting the environment and the Great Lakes, while having an obligation to continue to meet the energy needs of Michigan and the region. Line 5 contributes to those needs. A primary focus is advancing the project forward on items under Enbridge's purview and control including permitting, design and engineering, and contracting for the construction phase. Monthly reports are

provided to the Authority which outline major accomplishments such as the joint effort between MDOT Authority staff and Enbridge to develop tunnel specifications that will be used in the design and construction of the tunnel to ensure it has been constructed to the jointly specified standards. Enbridge is working with the Army Corps of Engineers and the Michigan PSC to advance the permit process. Permits were filed back in April 2020. Michigan Department of Environment, Great Lakes and Energy (EGLE) permits have been received and were executed in February 2021. It is anticipated the Army Corps will advance their permits on tribal historical cultural sites, fish and wildlife reviews, and wetland mitigation sometime in 2021. Enbridge has completed the engineering and design phase of the project and has now moved into the construction phase. A contracting firm will be identified for construction of the tunnel. A draft Request for Proposals (RFP) for the contractor was submitted to the Authority this past May for review. The goal is to select the contractor by the end of 2021. Peter Holran also introduced Guy Krepps as the new Enbridge Project Director overseeing the Tunnel Project, and Aaron Dennis, Enbridge Lead Engineer for the project. Member England inquired if Enbridge has seen any significant cost increases to the construction bids for the tunnel. Peter Holran indicated Enbridge is not to that phase yet; however, it is anticipated several firms will respond to the RFP which will lend itself to reviewing costs, thus Peter Holran will be better able to respond to the inquiry once bids have been received.

**5.5 Mike Mooney, Consultant to MSCA, Progress Update Report**

- a.** Mike Mooney, from Golden, Colorado, Jefferson County, stated there are three informational items from the Authority that he has been involved with.
  - i.** Draft RFP for construction of the GLTP was submitted by Enbridge and is being reviewed by the Authority for compliance and alignment prior to approval as per the Tunnel Agreement.
  - ii.** The Authority approved the joint specifications at the February 3, 2021 meeting; however, Enbridge has now requested some minor modifications which are being reviewed by Mike Mooney, Matt Chynoweth, MDOT, Director of Bureau of Bridges and Structures, and Ryan Mitchell, MDOT Innovative Contracting Manager. It is anticipated the review will be completed in June, followed by a recommendation regarding the amended RFP will be submitted to the Authority at a future meeting.
  - iii.** Enbridge is developing a draft tenant manual for third-party utility participation in the tunnel. This manual would address all engineering aspects involving third-party utility installation and operations within the tunnel, and the north/south stations on the shore. This would include cable containment, support, anchorage locations and specifications, concrete, vaults, thermal loading, and service vehicle operations within the tunnel. This is not a required submittal for Authority review; Enbridge is seeking Authority feedback on this document. There are bi-weekly meetings attended by Mike Mooney, Ryan Mitchell, and Enbridge staff to discuss this manual.

Member England asked if there have been any inquiries from Truestream, a subsidiary of Great Lakes Energy. Ryan Mitchell noted the process that has been set forth in the tunnel agreement for third-party utilities states that when a third-party utility expresses interest to either party of the Tunnel Agreement, Enbridge Energy or the MSCA, the contacted Party notifies the other party. To date, neither Enbridge nor the Authority have been contacted by Truestream. Enbridge has been contacted by two utility companies.

**6. Discuss any Inquiries or Written Proposals Received by Interested Third-Party Utilities – Ryan Mitchell, MDOT; Enbridge Energy**

Written inquiries have been from two utility companies, one in February from an unnamed utility and the other from Peninsula Fiber Network (PFN). The Tunnel Agreement states the Authority can grant use rights to third-party entity's authorizing use of the tunnel to locate their utilities providing it is technically feasible and safe to do so. PFN representatives David McCartney, Special Advisor and PFN Board of Directors member, and Scott Randall, General Manager, from Marquette, Michigan, Marquette County, gave an overview of the company. PFN is a Michigan based telecommunications company operating a fiber network that spans much of the state by providing services to the major telecommunications providers, including cellular providers Verizon, AT&T, and T-Mobile. PFN also operates the next generation 911 network in Michigan. The goal is to build resiliency into their network through broadband expansion by building a fiber optic corridor within the tunnel and then make that available to any other company who would like to use that route which would provide a stable and secure communications network within Michigan. Chairman Nystrom noted that the Authority has a responsibility to oversee the design, construction, operation, and maintenance of the tunnel, but also a secondary goal to promote additional utilities use of the tunnel to give broader access to all Michigan citizens.

**7. Authority Member Comments**

Member England suggested with all the activity surrounding the tunnel project, an informational meeting prior to the October meeting could be beneficial to keep abreast of the opportunities and to share information. This would be an open public meeting to be held late summer. Additional details to come.

**VI. PUBLIC COMMENT**

Monica Monsma, Chelsea Michigan, Washtenaw County, coordinated the public comments that were heard. Public comments are not question and answer periods for Authority members and there will not be a response provided from Authority members; however public comments will be taken under advisement for consideration. Four individuals presented public comment: Beth Wallace, Patrick Egan, Barbara Stamiris and Ashley Soltysiak (listed in order of presentations). Full text is attached to these minutes.

**VII. ADJOURN**

With no further business at hand, Chairman Nystrom called for Motion to Adjourn. Motion by Anthony England. Seconded by Chairman Nystrom. Motion Carried.

Meeting adjourned at 2:08 p.m.

Minutes taken by:  
Cindy Robinson  
Senior Executive Management Assistant  
MDOT Bureau of Development

Approved: \_\_\_\_\_

# ***MACKINAC STRAITS CORRIDOR AUTHORITY***

## ***Meeting Agenda***

June 2, 2021

1:00 pm

[Livestream for public viewing](#)

- I. Welcome/Call to order**
- II. Approval of agenda**
- III. Approval of the February 2, 2021 meeting minutes**
- IV. Old Business**
  - 1. None
- V. New Business**
  - 1. Welcome new Authority Member Paul Novak
  - 2. Raymond O. Howd to continue representing the Authority as Special Assistant Attorney General
  - 3. Update on Public Service Commission proceedings – Raymond O. Howd, Special Assistant Attorney General
  - 4. Recent Tribal Consultation outreach discussions
  - 5. Summary of Utility Tunnel project activity, progress, and status – Enbridge Energy
  - 6. Discuss any inquiries or written proposals received by interested Third-Party Utilities – Ryan Mitchell, MDOT; Enbridge Energy
    - a. PFN proposal
  - 7. Authority Member Comments
- VI. Public Comments**
  - a. The public is encouraged to address Authority members by using the sign-up function provided in the [online public comment form](#). Public comments will be scheduled in the order they are received through the sign-up function, limited to three (3) minutes per comment within the allotted time

for the meeting until 4 p.m. Written comments received by 10:00 a.m. 6/2 will be shared with Authority Members in advance of the meeting. All written public comments received in the online comment form until the conclusion of the meeting will be posted with the approved meeting minutes.

## **VII. Adjournment**



**MACKINAC STRAITS CORRIDOR AUTHORITY  
PUBLIC MEETING**

February 3, 2021 – 1:00 pm

Virtual Meeting (<https://livestream.com/mdot/mscameeting02032021>)

**MEETING MINUTES**

Members Present:     Mike Nystrom, MSCA  
                               Anthony England, MSCA

Members Absent:     None

Also Present:         Raymond Howd, Assistant Attorney General to MSCA  
                               Dr. Mike Mooney, Consultant to MSCA  
                               Michael Bagale, Enbridge  
                               Peter Holran, Enbridge  
                               Charles Drayton, Enbridge  
                               Aaron Dennis, Enbridge  
                               Paul Turner, Enbridge  
                               Mike Moeller, Enbridge  
                               Jennifer Downs, Enbridge  
                               Monica Monsma, MDOT  
                               James Lake, MDOT  
                               Corey Petee, MDOT  
                               Ruth Clark, MDOT  
                               Ryan Mitchell, MDOT

**I.     WELCOME**

Monica Monsma opened the meeting at 1:02 p.m. and welcomed attendees and guests.

Mackinac Straits Corridor Authority (MSCA) Chairman Michael Nystrom introduced himself and welcomed attendees to the meeting. MSCA Member Dr. Anthony England introduced himself, stating he was attending from Superior Township, Washtenaw Co. MI.

**OPENING STATEMENT/INTRODUCTION**

Chairman Nystrom stated the Responsibility of the authority:

As the MSCA is relatively new and its role is not always clear, the legislation that created this authority requires the Authority to review and oversee construction, maintenance, and operation of utility tunnel under the Straits of Mackinac. The purview of the Authority is to represent the interests of the State of Michigan to ensure that if permitted, the tunnel will be designed, constructed, operated, and maintained in accordance with state of the industry standards and to ensure its safety.

Chairman Nystrom outlined the virtual meeting public comment function, stating that many comments have been received in advance of the meeting and reviewed by the

Authority. Meeting related information was posted in advance on our website and made available publicly. A public comment form was made available for use. All comments sent before 11 am were provided to the Authority. Staff will read public comments during this meeting. All comments will be part of the public record of this meeting.

**II. REVIEW OF AGENDA**

Chairman Nystrom called for Motion to Approve Agenda. Motion by Anthony England. Seconded by Chairman Nystrom. 2 ayes, 0 nays. Motion carried.

**III. REVIEW OF PREVIOUS MINUTES**

Chairman Nystrom called for Motion to Approve March 6, 2020 Meeting Minutes. Motion by Anthony England. Seconded by Chairman Nystrom. 2 ayes, 0 nays. Motion carried.

**IV. OLD BUSINESS**

None.

**V. NEW BUSINESS**

1. Summary of MSCA role as Intervenor in the Michigan Public Service Commission (MPSC) proceedings on the Enbridge Application to relocate a segment of Line 5 into Tunnel –
  - a. Raymond O. Howd, Assistant Attorney General: Numerous parties have moved to intervene, including numerous environmental groups, tribal governments, AG, labor districts council, and the propane gas association. On August 5, 2020, the Authority filed a motion to intervene in these proceedings, indicating that the MSCA has a direct interest in ensuring all MPSC's requirements are met. Our role is to protect the public and ensure that design and construction are the highest quality. In October, the administrative law judge (ALJ) determined that the scope of the MPSC proceedings will include certain aspects of the tunnel, which will house the relocated Line 5. Testimony on leak prevention and construction materials will be presented. The ALJ did deny other intervenors' requests to consider effects of greenhouse gases and the need for future petroleum products. Certain Intervenor's appealed the ALJ ruling to the MPSC. Since the Governor and DNR revoked the 1953 easements currently used to transport Enbridge's products on the bottomlands of the Straits, and there is currently litigation between Enbridge and the Governor/AG on this issue, the MPSC remanded the motion in limine to the ALJ to reconsider what, if any, effect these actions might have on the scope of the PSC proceedings. The Parties have submitted briefs on remand and oral arguments will occur this Friday on whether the ALJ should reach a different result from its original ruling. On December 21 – the ALJ issued a revised scheduling order. Hearing is this Friday on Enbridge's motion in limine, and a ruling is expected late February. In March, appeals will be heard. Written Testimony of MSCA experts is due by May 18 that will cover their review of designs, plans and

specifications. Over the summer, opportunities will be allowed for Parties to rebut that written testimony.

- b. Member England asked about when the tunnel can be built. Mr. Howd responded that all permits must first be approved - Army Corps, EGLE, and MPSC.

**2. Consultant contract for As-Needed Tunnel Engineering Expert and Permit Review Services awarded to McMillen Jacobs Michigan, Inc.**

- a. Ryan Mitchell, attending from City of Dewitt, Clinton County, MI stated the contract is for extension of the State's limited resources, to ensure proper due diligence in evaluating submittals, providing tunnel engineering expertise independent of the design development, focusing on the technical aspects of design as it relates to the permit applications, and providing additional staff resources and expertise to support other affected agencies.

**3. Consultant contract for As-Needed Structural Design Engineering Services awarded to CDM Smith Michigan, Inc.**

- a. Ryan Mitchell stated this contract for Structural Design and Engineering consultant services is similar to the previous item in that it provides needed extension of staff resources to the effort of ensuring a robust review of the Project Specifications. This contract focuses on structural design, and provides the State needed expertise in Michigan concrete design and construction requirements and conditions.
- b. Chairman Nystrom called for Motion to Approve. Motion by Anthony England. Seconded by Chairman Nystrom. 2 ayes, 0 nays. Motion carried.

**4. Summary of Line 5 Replacement Utility Tunnel Project activity, progress, and status – Enbridge Energy**

- a. Peter Holran, Director of Government Relations for Enbridge, attending from Falls Church, Northern Virginia, gave an update of project related activities and community engagement efforts.

Michael Bagale, Project Director for Enbridge, attending from Harris County, Houston, Texas, provided a project update.

**5. Discuss any inquiries or written proposals received by interested Third-Party utilities – Enbridge Energy**

- a. Peter Holran stated Enbridge has been approached by a third-party utility with interest in locating in the tunnel. Peninsula Fiber Network based in Marquette, MI has expressed interest and discussions are ongoing regarding feasibility. One benefit noted is that PFN provides 911 services throughout the state and they are looking for redundancy in that system, which may be beneficial, to all of Michigan.
- b. Mike Moeller of Enbridge, attending from Lake County Indiana, City of Schererville stated Enbridge has continued to add resources - technical and

human to monitor and protect the pipeline in the straits, including new high power infrared cameras on both sides of the Straits; the Enbridge maritime pipeline protection program. Additionally, cameras were installed on each side include a xenon searchlight; which can be made available to first responders for search and rescue.

- c. Member England noted that MSCA doesn't have control or responsibility for Line 5 as it is now.

- 6. Expert tunnel engineering consultant for the Authority, Dr. Mike Mooney, attending from Riverside County, La Quinta, CA provided a detailed report, attached to these minutes.

8. Procurement of Authority's Independent Quality Assurance (QA) Contractor. Addressed by Mike Mooney:

- a. Dr. Mooney stated the Tunnel Agreement specifically requires independent quality assurance of the construction process, on behalf of the Authority, to be funded by Enbridge. This will be above and beyond Enbridge's planned quality assurance program. The role of the independent quality assurance contractor is to verify comprehensive quality assurance is achieved, and that project specifications are met, during construction. Dr. Mooney added that when Enbridge transfers ownership of the tunnel to the MSCA at completion, the QA consultant will assure the tunnel is constructed pursuant to the project design and specifications. He further stated that development of the independent quality assurance is ongoing; a natural extension of project specifications, that a draft RFP for these services is under development.
- b. Ryan Mitchell noted that MDOT routinely hires quality assurance contractors.

**VI. PUBLIC COMMENT**

Public comments were read by Monica Monsma, James Lake and Ruth Baker. Full text is attached to these minutes.

**VII. ADJOURN**

With no further business at hand, Chairman Nystrom called for Motion to Adjourn. Motion by Anthony England. Seconded by Chairman Nystrom. Motion Carried.

Meeting adjourned at 4:02 p.m.

Minutes taken by:  
Ruth Clark  
Transportation Planner  
MDOT Environmental Services Section

Approved: \_\_\_\_\_

May 20, 2021

Michael Nystrom, Chair  
Mackinac Straits Corridor Authority

Dear Chairman Nystrom,

The purpose of this letter is twofold.

First, it serves as my introduction to you and Authority Member England. I look forward to serving on the Authority with both of you and approaching the issues the Authority will confront over the coming years with a spirit of professionalism and collegiality.

Second, I am taking this opportunity to ask for the extension of a personal courtesy. I am one of the counsel that has been appointed by Judge Judith Levy to serve on the Plaintiff Steering Committee that represents the citizens of Flint, Michigan who were impacted by the water crisis in the class action case pending in federal district court in *In re Flint Water Cases*, United States District Court Eastern District of Michigan Case No. 5:16-cv-10444. Regrettably, Judge Levy has scheduled the Plaintiffs Motion for Class Certification in this case on June 2<sup>nd</sup> at 1 p.m. I will be unable to change this date and it conflicts with the Authority meeting currently set at the same time.

As I believe that the Chair of the Authority possesses the unilateral authority to set the dates and times of meetings, I am requesting that you change the date and time of the meeting. I am personally available on June 1<sup>st</sup>, 3<sup>rd</sup> or 4<sup>th</sup> and can clear my schedule to make other dates work if those are not convenient for you or Authority Member England. Alternatively, if the meeting is to proceed on June 2<sup>nd</sup>, I would ask that the time for the meeting be set at 8 am so that I may participate and still participate in my court hearing at 1pm. If the meeting proceeds at 1pm, I will be unable to participate.

Your consideration of this request is greatly appreciated. Also, I am requesting that our MDOT liaison Mr. Mitchell include this correspondence in the materials that are compiled in the record for the next Authority meeting.

Respectfully,



Paul F. Novak

C: Anthony England

Ryan Mitchell

Ray Houd

**STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL  
LEGAL SERVICES CONTRACT**

DANA NESSEL, Attorney General of the State of Michigan (Attorney General), and the Michigan Department of Attorney General (Department) retain and appoint Raymond O. Howd, as a Special Assistant Attorney General (SAAG) to provide legal services to the Mackinac Straits Corridor Authority.

The legal services provided to the Mackinac Straits Corridor Authority will comply with the following terms and conditions in this Contract:

**1. PARTIES/PURPOSE**

1.1 Parties. The parties to this Contract are the Michigan Department of Attorney General and Raymond O. Howd. No other attorney may engage in the practice of law on behalf of the State of Michigan under this Contract without the Department's prior approval, a Contract amendment, and a SAAG appointment from the Attorney General.

The Mackinac Straits Corridor Authority is also a party to this Contract. It agrees to pay all fees and costs associated with the legal services rendered after review and approval by the Department.

1.2 Purpose. The Department and Raymond O. Howd agree that the SAAG will provide legal representation and advice to the Mackinac Straits Corridor Authority. All case resolutions are to be approved in advance by the Department.

1.3 Training. The SAAG has been retained under this Contract because of his specialized expertise and experience in a particular field of law, conflict situation, or contractual provision. The SAAG agrees that the Chief Legal Counsel specifically designated in this Contract as Contract Manager will act as the liaison between the SAAG and any state employee or agency served by this Contract. All assignment requests to the SAAG must be simultaneously transmitted to the Contract Manager. Upon request, the SAAG agrees to explain the rationale for any legal opinion or recommendation to Chief Legal Counsel or any assigned Assistant Attorney General (AAG) and to assist in the development of Department staff to understand the particular field of law involved in this Contract. The SAAG agrees to simultaneously provide a copy of all correspondence to the Chief Legal Counsel or the assigned AAG and to promptly advise and provide an opportunity for the Chief Legal Counsel or the assigned AAG to participate in any telephone calls or meetings with any state employee or agency served by this Contract. Any time spent by the SAAG training the Department staff may be billed under the terms of this Contract.

1.4 Work Product. The SAAG understands that all work product is subject to review by the Department. The Department reserves the right to deny payment for any work product deemed unacceptable. Delivery of such a deficient work product may also result in Contract termination under paragraph 10 of this Contract.

## 2. TERM OF CONTRACT

The initial term of this Contract is April 1, 2021 through December 31, 2021. This Contract may be extended at the option of the Department upon thirty (30) calendar days written notice.

## 3. COMPENSATION FOR SERVICES PROVIDED

3.1 The total amount of compensation for services and expenses during the term of this Contract cannot exceed the budget ceiling set forth in paragraph 4.1 of this Contract, unless otherwise amended by a Contract addendum.

3.2 The costs for overhead, electronic legal research (i.e., Westlaw, Lexis, etc.), telephone calls, and office supplies utilized by the SAAG are part of the SAAG's agreed upon fees and such costs will not be separately billed. Unless otherwise provided in this Contract, the SAAG cannot include charges for the services of other employees or members of the SAAG firm, including paralegals, and secretarial and clerical employees. No additional charges are allowed, except by prior written permission of the Department. The SAAG understands that the Department will not pay any additional charges that have not received prior approval.

3.3 Payment for services and reimbursement for expenses incurred is the obligation of the Mackinac Straits Corridor Authority.

## 4. CONTRACT BUDGET, BILLING AND REIMBURSEMENT

4.1 Budget Ceiling. A budget ceiling of Fifty Thousand Dollars (\$50,000.00) is established to cover all services and expenses performed or incurred in the performance of this Contract. Due to the nature of this Contract and the difficulty in estimating actual costs and the demand for services, the Contract budget ceiling may be increased if approved in writing by the Department. An increase in the budget ceiling cannot affect the established hourly rate during the term of this Contract or any amendment.

4.2 Billing for Hourly Services. The SAAG must bill the Department monthly. The invoice format must indicate the nature of the work performed, time devoted, the individual performing the work, and the invoice amount. Additional



information must be provided if requested by the Department. All invoices must be furnished to the Contract Manager identified in section 6.1.

The hourly rate to be charged for the SAAG's work is:

Raymond O. Howd      \$125.00 per hour

The SAAG must obtain prior written authorization from the Department's Contract Manager to hire an expert witness.

The Department will not pay for travel time, waiting time, or other time not spent actively performing services under the Contract.

4.3 Reimbursement for Actual Expenses. Actual litigation costs (filing fees, depositions, and postage) may be reimbursed upon presentation to the Department in accordance with the procedures provided in this Contract. The SAAG must provide original copies of all receipts for meals, lodging and travel reimbursement with his invoices. Allowed expenses must be specifically and individually identified at the end of the invoice, resulting in a total cumulative statement with attached original receipts. The Department reserves the right to deny reimbursement of any expenses for which prior approval was not sought pursuant to this Contract.

The SAAG will be reimbursed for lodging and travel expenses in accordance with the State of Michigan travel and other expense requirements, which can be found at [http://www.michigan.gov/dtmb/0,1607,7-150-9141\\_13132---.00.html](http://www.michigan.gov/dtmb/0,1607,7-150-9141_13132---.00.html). The SAAG acknowledges that he has reviewed the State travel rates posted on the website, which are updated annually. All out-of-state travel requires the prior written approval of the Department. Expenses exceeding State rates will not be reimbursed.

4.4 Registration. The SAAG is required to register as a vendor and complete the electronic funds transfer (EFT) process, as the required method of payment under this Contract, through the Michigan Department of Technology, Management and Budget (DTMB). The SAAG (vendor) and EFT registration must be completed through the DTMB website at [https://www.michigan.gov/budget/0,9357,7-379-88601\\_88641---.00.html](https://www.michigan.gov/budget/0,9357,7-379-88601_88641---.00.html).

4.5 Billing and Payment Deadlines. All invoices will be paid on a current basis, within 30 calendar days after receipt of satisfactory invoice submission, unless the parties agree on another arrangement. The SAAG must complete all work in fiscal year by September 30 each year of the Contract, and submit all payment requests no later than October 7, each year. Work performed in a fiscal year must be completed by September 30, and the SAAG must submit all payment requests no later than October 7, in the upcoming fiscal year.

## 5. REPRESENTATIONS

5.1 Qualifications. The SAAG, by signing this Contract, attests that he is qualified to perform the services specified in this Contract and agrees to faithfully and diligently perform the services consistent with the standard of legal practice in the community.

5.2 Conflict of Interest. Prior to entering into this Contract, the SAAG must identify and disclose to the Department any matter in which the SAAG is involved in, which is adverse to the State of Michigan. The SAAG represents that he has conducted a conflict check prior to entering into this Contract and no conflicts exist with the proposed legal services. The SAAG agrees to not undertake representation of a client if the representation of that client is related to the subject matter of this Contract or will be adverse to the State of Michigan, unless the SAAG obtains prior written approval to do so from the Department.

5.3 Services to be Confidential. The SAAG must keep confidential all services and information, including records, reports, and estimates. The SAAG must not divulge any information to any person other than to authorized representatives of the Department and of the Mackinac Straits Corridor Authority, except as required by testimony under oath in judicial proceedings, or as otherwise required by law. This includes, but is not limited, to information maintained on the SAAG's computer system.

All files and documents containing confidential information must be filed in separate files maintained in the office of the SAAG with access restricted to the SAAG and to needed clerical personnel. All documents prepared on the SAAG's computer system must be maintained in a separate library with access permitted only to the SAAG and to needed clerical personnel.

5.4 Assignments and Subcontracting. The SAAG must not assign or subcontract any of the work or services to be performed under this Contract, including work assigned to other members or employees of the SAAG firm, without the prior written approval of the Department. Any member or employee of the SAAG's law firm who received prior approval from the Department to perform services under this Contract is bound by the terms and conditions of this Contract.

5.5 Facilities and Personnel. The SAAG has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

5.6 Advertisement. The SAAG, during the term of appointment and thereafter, must not advertise his position as a Special Assistant Attorney General to the public. The SAAG designation may be listed on the SAAG's resume or other professional biographical summary, including resumes or summaries that are

furnished to professional societies, associations, or organizations. Any such designation by the SAAG must first be submitted to and approved by the Department, after consultation with the Department.

5.7 Compliance with Department of Attorney General Policies. The SAAG agrees to be bound by the Department's Media Contact and Ethics policies (attached), as they exist at the time of the execution of this Contract and as they may be amended in the future. To the extent that the Media Contact or Ethics policies change during the Contract Term, the Department will provide the SAAG with copies of the revised policies.

5.8 Records. The SAAG must maintain complete billing records. This requirement applies to all information maintained or stored in the SAAG's computer system. The records must be kept in accordance with generally accepted accounting practices and sound business practices. The Department and the Mackinac Straits Corridor Authority, or their designees, reserve the right to inspect all records of the SAAG related to this Contract.

5.9 Non-Discrimination. The SAAG, in the performance of this Contract, agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. This covenant is required by the Elliott-Larsen Civil Rights Act, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and any breach of the Act may be regarded as a material breach of the Contract. The SAAG agrees to comply with the provisions of the Federal Civil Rights Act of 1964, 42 USC §2000d, in performing the services under this Contract.

5.10 Unfair Labor Practices. The State will not award a contract or subcontract to any employer, or any subcontractor, manufacturer, or supplier of the employer, whose name appears in the current register compiled pursuant to 1980 PA 278, MCL 423.321, *et seq.* The State may void this Contract if after the award of the Contract, the name of the SAAG or his law firm appears in the register.

5.11 Compliance. The SAAG's activities under this Contract are subject to applicable State and Federal laws and to the Rules of Professional Conduct applicable to members of the Michigan Bar Association. In accordance with MCL 18.1470, DTMB or its designee may audit SAAG to verify compliance with this Contract.

5.12 Independent Contractor. The relationship of the SAAG to the Department and to the Mackinac Straits Corridor Authority in this Contract is that

of an independent contractor. No liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, must arise, accrue or be implied to either party or either party's agent, subcontractor or employee as a result of the performance of this Contract. The SAAG will be solely and entirely responsible for his acts and the acts of the SAAG's law firm, agents and employees during the performance of this Contract. Notwithstanding the above, the relationship is subject to the requirements of the attorney-client privilege.

6. **MANAGEMENT OF CASE(S)**

6.1 **Notifications.** The SAAG must direct all notices, correspondence, inquiries, billing statements, pleadings, and documents mentioned in this Contract to the attention of the Attorney General Chief Legal Counsel. The Chief Legal Counsel is the Contract Manager, unless notice of another designation is received from the Attorney General. The Chief Legal Counsel may designate an AAG to oversee the day-to-day administration of the Contract.

For the Department:

John VanDeventer  
Chief Legal Counsel  
Michigan Department of Attorney General  
525 West Ottawa  
Lansing, MI 48913  
Phone Number (517) 335-7626

For the SAAG:

Raymond O. Howd  
5554 Earliglow Lane  
Haslett, MI 48840  
(517) 285-7396  
Howdlaw@outlook.com

6.2 The SAAG must promptly inform the Contract Manager of the following developments as soon as they become known:

A. Favorable actions or events that enable meeting time schedules and/or goals sooner than anticipated.

B. Delays or adverse conditions that materially prevent, or may materially prevent, the meeting of the objectives of the services provided. A

statement of any remedial action taken or contemplated by the SAAG must accompany this disclosure.

For every case accepted, the SAAG must:

A. Promptly undertake all efforts, including legal proceedings, as directed by the Contract Manager, and must prosecute any case to its conclusion unless directed to the contrary by the Contract Manager.

B. Provide copies of all pleadings filed in any court by the SAAG, or by the opposing party, to the Contract Manager.

6.3 Motions. Before any dispositive motion is filed, the supporting brief must be submitted to the Contract Manager for review and approval for filing with the court.

6.4 Investigative Support. All claims will be vigorously pursued and prepared for filing. If authorized by the Contract Manager, use of investigative subpoenas must be thorough and aggressive. The Contract Manager may request investigative subpoenas in addition to what the SAAG has filed.

6.5 Discovery Requests. The SAAG must consult with Contract Manager and assist in the preparation of answers to requests for discovery. The SAAG must indicate those requests to which he intends to object.

6.6 Witness and Exhibit Lists. At least ten (10) calendar days before the day a witness list or an exhibit list is due, the Contract Manager must receive a preliminary witness list or exhibit list for review and recommendation of additional names of witnesses or additional exhibits.

6.7 Mediation. Fifteen (15) calendar days before any mediation, the mediation summary must be submitted to the Contract Manager for review and recommendation. Immediately following mediation, the SAAG must submit a status memorandum indicating the amount of the mediation and a recommendation to accept or reject the mediation.

6.8 Trial Dates. The SAAG must advise the Contract Manager immediately upon receipt of a trial date.

6.9 Settlements. All pleas/settlements are subject to approval by the Department. The SAAG must immediately communicate any plea/settlement proposal received along with a recommendation to accept, reject, or offer a counter-proposal to any offer received to the Department's Contract Manager. "Settlement" includes, but is not limited to, the voluntary remand of a case to the trial court or by way of stipulation or motion.

6.10 Money. The SAAG must only accept payment by an opposing party under the following terms:

A. Restitution must be handled as ordered by the court or agreed to in a settlement/plea agreement. The SAAG must require the payment ordered by the court or by plea/settlement:

- i. be made by check, certified check, cashier's check, or money order;
- ii. payable to the "State of Michigan";
- iii. include the tax identification number/social security number of the payer; and
- iv. include the account to which the remittance is to be applied.

B. Any funds received by the SAAG as payment on a case assigned pursuant to court order, plea/settlement must be transmitted by the SAAG to the Contract Manager within seventy-two (72) hours of receipt.

6.11 File Closing. The SAAG must advise the Contract Manager, in writing, of the reason for closing a file (e.g., whereabouts unknown, no assets, bankruptcy, payment in full, or settlement). Requests for reimbursement of legal services (see paragraph 4.2) and expenses (see paragraph 4.3) must be submitted simultaneously with the closing memorandum.

## 7. INDEMNIFICATION

The SAAG agrees to hold harmless the State of Michigan, its elected officials, officers, agencies, boards, and employees against and from any and all liabilities, damages, penalties, claims, costs, charges, and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by, or asserted against the State of Michigan for either of the following reasons:

A. Any malpractice, negligent or tortious act or omission attributable, in whole or in part, to the SAAG or any of his employees, consultants, subcontractors, assigns, agents, or any entities associated, affiliated, or subsidiary to the SAAG now existing, or later created, their agents and employees for whose acts any of them might be liable.

B. The SAAG's failure to perform his obligation either expressed or implied by this Contract.

## 8. INSURANCE

8.1 Errors and Omissions. The SAAG is advised to maintain professional liability insurance sufficient in amount to provide coverage for any errors or omissions arising out of the performance of any of the professional services rendered pursuant to this Contract.

8.2 Certificates of Insurance. Certificates evidencing the purchase of insurance must be furnished to the Department, upon request. All certificates are to be prepared and submitted by the insurance provider and must contain a provision indicating that the coverage(s) afforded under the policies will not be cancelled, materially changed, or not renewed without thirty (30) calendar days prior written notice, except for ten (10) calendar days for non-payment of premium, and any such notice of cancellation, material change, or non-renewal must be promptly forwarded to the Department upon receipt.

8.3 Additional Insurance. If, during the term of this Contract changed conditions should, in the judgment of the Department, render inadequate the insurance limits the SAAG will furnish, on demand, proof of additional coverage as may be required. All insurance required under this Contract must be acquired at the expense of the SAAG under valid and enforceable policies, issued by insurers of recognized responsibility. The Department reserves the right to reject as unacceptable any insurer.

## 9. APPEALS

The SAAG agrees that no appeal of any order(s) of the Michigan Court of Claims, any Michigan Circuit Court, the Michigan Court of Appeals, or any United States District Court will be taken to the Michigan Court of Appeals, the Michigan Supreme Court, or any United States Circuit Court of Appeals, without prior written approval of the Michigan Solicitor General, Department of Attorney General. Further, the SAAG agrees that no petition for certiorari will be filed in the United States Supreme Court without prior written permission of the Michigan Solicitor General, Department of Attorney General.

## 10. TERMINATION OF CONTRACT AND APPOINTMENT

10.1 SAAG Termination. The SAAG may terminate this Contract upon thirty (30) calendar day's prior written notice (Notice of Termination). Upon delivery of such notice, the SAAG must continue all work and services until otherwise directed by the Contract Manager. The SAAG will be paid for actual services rendered prior to termination, and for actual services as may be directed by the Department. No payments under this section may exceed the budget ceiling amount established in paragraph 4.1 of this Contract.

10.2 Attorney General Termination. The Department may terminate this Contract and SAAG appointment, at any time and without cause, by issuing a Notice of Termination to the SAAG.

10.3 Termination Process and Work Product. Upon receipt of a Notice of Termination, and except as otherwise directed by the Attorney General or her designee, the SAAG must:

- A. stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- B. incur no costs beyond the date specified by the Department;
- C. on the date the termination is effective, submit to the Contract Manager all records, reports, documents, and pleadings as the Department specifies and carry out such directives as the Department may issue concerning the safeguarding and disposition of files and property; and
- D. submit within thirty (30) calendar days a closing memorandum and final billing.

Upon termination of this Contract, all finished or unfinished original (or copies when originals are unavailable) documents, briefs, files, notes, or other materials (the Work Product) prepared by the SAAG under this Contract, must become the exclusive property of the Department, free from any claims on the part of the SAAG except as herein specifically provided. The Work Product must promptly be delivered to the Contract Manager. The SAAG acknowledges that any intentional failure or delay on its part to deliver the Work Product to the Department will cause irreparable injury to the State of Michigan not adequately compensable in damages and for which the State of Michigan has no adequate remedy at law. The SAAG accordingly agrees that the Department may, in such event, seek injunctive relief in a court of competent jurisdiction. The Department must have full and unrestricted use of the Work Product for the purpose of completing the services. In addition, each party will assist the other party in the orderly termination of the Contract.

The rights and remedies of either party provided by the Contract are in addition to any other rights and remedies provided by law or equity.

## 11. GENERAL PROVISIONS

11.1 Governing Law and Jurisdiction. This Contract is subject to and will be constructed according to the laws of the State of Michigan, and no action must be commenced against the Department or the Attorney General, her designee, agents



or employees, or the Mackinac Straits Corridor Authority for any matter whatsoever arising out of the Contract, in any courts other than the Michigan Court of Claims.

11.2 Strategic Partners. SAAG warrants that SAAG is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

11.3 No Waiver. A party's failure to insist on the strict performance of this Contract does not constitute waiver of any breach of the Contract.

11.4 Additional SAAGs. It is understood that during the term of this Contract, the Department may contract with other SAAGs providing the same or similar services.

11.5 Other Debts. The SAAG agrees that he is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

11.6 Invalidity. If any provision of this Contract or its application to any persons or circumstances to any extent is judicially determined to be invalid or unenforceable, the remainder of this Contract will not be affected, and each provision of the Contract will be valid and enforceable to the fullest extent permitted by law.

11.7 Headings. Contract section headings are for convenience only and must not be used to interpret the scope or intent of this Contract.


11.8 Entire Agreement. This Contract represents the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

11.9 Amendment. No Contract amendment will be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.


11.10 Issuing Office. This Contract is issued by the Department and is the only state office authorized to change the terms and conditions of this Contract.

11.11 Counterparts. This Contract may be signed in counterparts, each of which has the force of an original, and all of which constitute one document.

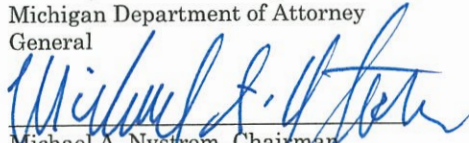
Dated: 4/15/2021

  
Raymond O. Howd  
Special Assistant Attorney General

Dated: 4/21/21

  
Attorney General or Designee  
Michigan Department of Attorney  
General

Dated: 4-15-21

  
Michael A. Nystrom, Chairman  
Mackinac Straits Corridor Authority



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**May 19, 2021**

**VIA EMAIL ONLY**

Michael Nystrom, Chair, Mackinac Straits Corridor Authority  
Michigan Department of Transportation  
State Transportation Building  
425 W. Ottawa St.  
P.O. Box 30050  
Lansing, MI 48909

**RE: Bay Mills Indian Community's Request for Meaningful Consultation**

Dear Chair Nystrom,

The Bay Mills Indian Community ("Bay Mills") appreciated the meeting, on May 10, 2021, with the Mackinac Straits Corridor Authority ("MSCA") and the Michigan Department of Transportation ("MDOT") to discuss the need for the MSCA to initiate consultation with Bay Mills and other Tribal Nations regarding Enbridge's Great Lakes Tunnel Project ("Tunnel Project"). As we discussed at the meeting, it is imperative that the MSCA engage in meaningful consultation with Bay Mills and other Tribal Nations as it exercises its responsibilities with regard to the Tunnel Project.

We would like to reiterate our requests, made during the May 10 meeting, that the MSCA and MDOT as the MSCA makes decisions related to the Tunnel Project: (1) hold regular tribal consultation meetings, (2) engage in meaningful consultation, and (3) share information, analysis, and feedback related to the Tunnel Project with the Tribal Nations. As an initial matter, we request that you hold a consultation meeting with Bay Mills and other Tribal Nations *prior* to the MSCA's next scheduled meeting. Considering that the next MSCA meeting is currently scheduled for June 2, 2021, we respectfully suggest that you may need to postpone that meeting in order to fulfill the MSCA's tribal consultation obligations; or in the alternative, table all decisions for the next meeting, thereby, providing the MSCA time to meet with the Tribal Nations prior to making decision that might affect Tribal treaty rights.

We also want to use this opportunity to set out our expectations for meaningful consultation--consistent with our August 18, 2020 letter inviting the MSCA to the October 29, 2020 joint

consultation, our presentations during the October 29, 2020 joint consultation, and during our May 10, 2021 meeting.

### **Government-to-Government Consultation**

As you are surely aware, Bay Mills is a signatory to the March 28, 1836 Treaty of Washington (7 Stat. 491). In the 1836 Treaty Bay Mills reserved off-reservation fishing rights in the Great Lakes, including the Straits of Mackinac, that have been confirmed by the federal courts. *See United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *aff'd*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981).

In an effort to protect these Treaty resources, Bay Mills reinforces its request for formal consultation with the MSCA. As set out in the 2002 Government-to-Government Accord Between the State of Michigan and the Federally Recognized Indian Tribes in the State of Michigan, consultation is defined as:

a process of government-to-government dialogue between the state and the tribes regarding actions or proposed actions that significantly affect or may significantly affect the governmental interests of the other. Consultation includes (1) timely notification of the action or proposed action, (2) informing the other government of the potential impact of the action or proposed action on the interests of that government, (3) the opportunity for the other government to provide input and recommendations on proposed actions to the governmental officials responsible for the final decision, and (4) the right to be advised of the rejections (and basis for any such rejections) of recommendations on proposed actions by the governmental officials responsible for the final decision. Accord at V.

Furthermore, for the purposes of the 2002 Accord:

**"state action significantly affecting tribal interests" is defined as** regulations or legislation proposed by executive departments, and other policy statements or **actions of executive departments, that have or may have substantial direct effects on one or more tribes**, on the relationship between the state and tribes, or on the distribution of power and responsibilities between the state and tribes. State action includes the development of state policies under which the tribe must take voluntary action to trigger application of the policy. *Id.* [Emphasis added].

On October 31, 2019, Governor Whitmer affirmed the 2002 Accord through the issuance of Executive Directive No. 2019-17 (Directive), again emphasizing a commitment by the State to consult with the Tribal Nations on all matters of shared concern. The Governor has the power to "influence [an] agencies' rulemaking decisions through his or her appointments and directives." *Michigan Farm Bureau v. Dep't of Env'tl. Quality*, 292 Mich. App. 106, 144 (2011) (finding changed administrative policies after the election of a new governor to be within the constitutional

framework). In fact, “non-elected executive department heads, can be expected to carry out policies of the administration as communicated in [an] executive directive to the extent its directions are consistent with applicable law.” Mich. Att’y Gen. Op. No. 7157, 7 (June 2, 2004).

The Governor’s Directive applies to the MDOT and the MSCA. As laid out in Act 359, the MSCA is part of the transportation department: The Mackinac Straits corridor authority is created within the state transportation department.” MCL § 254.324b (1). Act 359 provides further that “[t]he Mackinac Straits corridor authority is a state institution within the meaning of section 9 of article II of the state constitution of 1963, and an instrumentality of this state exercising public and essential governmental functions. *Id.*

### **Meaningful Consultation**

State agencies must enter into the process with the goal and spirit of consultation and cooperation with the Tribal Nation to reach common agreement on the matter at issue. Starting with the definition of meaningful consultation, the MSCA and MDOT policies should clearly establish that the primary goal of consultation is to achieve consensus or consent.

At the outset, we note that the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) was endorsed by the United States on December 16, 2010, and UNDRIP Article 32 mandates that nation states consult with Tribal Nations “in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” We think, given the directives of the Governor’s Directive discussed herein, that free, prior and informed consent of Indigenous Peoples should be a requirement for project or permit decisions that would impact our resources and urge you to adopt provisions reflecting this principle.

To elaborate, the principle of free, prior, and informed consent is grounded in the right of self-determination. Tribes are “separate sovereigns preexisting the Constitution” with the inherent right to self-determination. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). The State of Michigan recognized that Tribal Nations are unique and possess independent and inherent sovereign authority. Accord at III ([e]ach federally recognized Indian tribe in the state of Michigan is a unique and independent government, with different management and decision-making structures, which exercises inherent sovereign authority). UNDRIP Article 3 also recognizes that “Indigenous peoples have the right of self-determination.” For meaningful consultation to occur, state agencies must have a thorough understanding of the inherent rights of Indigenous Peoples set forth in the UNDRIP, treaties, federal statutes and case law.

State agencies must enter into the process with the goal and spirit of consultation and cooperation with the Tribal Nation to reach common agreement on the matter at issue. Starting with the definition of meaningful consultation, the MSCA and MDOT policies should clearly establish that the primary goal of consultation is to achieve consensus or consent.

To achieve “meaningful communication and collaboration” the Governor’s Directive lays out a four-step process designed to occur before “taking an action or implementing a decision that may affect” the Tribal Nations located in the State of Michigan. Directive at 2. The steps include, One – Identification, Two – Notification, Three – Input, Four – Follow Up.

Although neither MSCA nor MDOT has indicated that it has officially taken Step One or Step Two with regard to the Tunnel Project, Bay Mills identified the Tunnel Project as a decision requiring consultation, invited the MSCA to a joint consultation, and the MSCA attended that meeting. Tribal Nation identification is one mechanism by which an activity may be deemed appropriate for consultation, according to MDOT’s updated tribal affairs policy. We appreciate MSCA’s and MDOT’s statements during the May 10 meeting that it plans to engage in consultation moving forward. Due to the magnitude of the proposed construction and the far-reaching impacts that the construction and continued operation of Enbridge’s Line 5 will have on Bay Mills’ treaty protected resources, it is imperative that the MSCA and MDOT begin as soon as possible regular government-to-government consultation with Bay Mills and other impacted Tribal Nations.

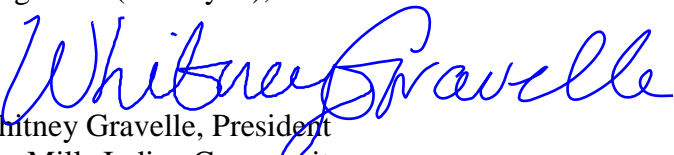
Government-to-Government consultation should be a process of seeking, discussing, and seriously considering the views of Bay Mills, and seeking agreement with Bay Mills on the development of regulations, rules, policies, programs, projects, plans, property decisions, and activities that may affect Treaty rights, Tribal Resources, historic properties, and contemporary cultural practices. This requires true government-to-government collaboration between the MSCA and Bay Mills, where high level MSCA representatives meet with Tribal leadership and staff. The MSCA should understand that a unilateral briefing given to Tribal Nations or merely cataloguing tribal concerns by the MSCA does not constitute consultation.

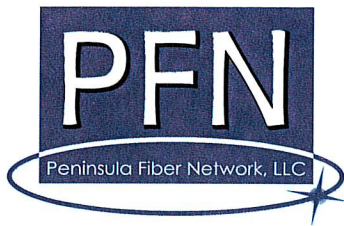
As set forth in the Directive, “Step Three – Input” establishes the process by which affected Tribal Nations provide input during the consultation process for MSCA activity. This Step requires that the MSCA coordinate with the Tribal Nation throughout the Step to ensure the Tribal Nation’s full participation. Key to this Step is: (1) that the Tribal Nation receive all information necessary to provide meaningful input; (2) that the Tribal Nation be informed of any changes to the activity or other issues that may arise during the consultation; and (3) that the Tribal Nation be afforded an opportunity to provide any supplemental input regarding any changed circumstances. Accordingly, Bay Mills requests that the MSCA and MDOT provide all information that is being considered as part of the MSCA’s decisions to approve the tunnel design and construction, including, but not limited to, any consultant reports and correspondence between the MSCA and Enbridge and/or the consultants addressing the tunnel design and construction. Bay Mills also requests that the MSCA and MDOT afford it the opportunity to review and provide meaningful input on these documents and decision points. If there are any changes to the Tunnel Project plans or documents under consideration, MSCA must immediately update Bay Mills and the impacted Tribal Nations.

“Step Four – Follow-up” of the Directive provides that, whenever feasible, the state agencies will provide preliminary feedback to interested Tribal Nations before the final decision is made or the action is taken. This preliminary feedback regarding the agency’s decision must be a written communication from the most senior official involved to the most senior tribal official. Accordingly, Bay Mills requests that the MSCA and MDOT provide feedback on Bay Mill’s input prior to the issuance of a final decision and clearly communicate to the Tribal Nations how the agency’s final decision addresses tribal input. Where the MSCA and MDOT is unable to fully address Tribal concerns, it should clearly explain its reasoning.

At the end of the day, meaningful consultation requires agencies to undertake a good faith effort to reach common agreement with the Tribal Nation on how to proceed with a matter. This should include clear processes for documenting the consultation, ensuring protection of culturally sensitive information, complying with Tribal laws or protocols governing consultation, and implementing a certification process at the completion of consultation for both parties to agree that meaningful consultation occurred. Bay Mills welcomes the opportunity for a robust tribal consultation process going forward. Please contact Bay Mills Legal Department at [candyt@bmic.net](mailto:candyt@bmic.net) to arrange for the next consultation meeting or to discuss any matters raised in this letter. Thank you for your attention to this issue.

Miigwetch (thank you),

  
Whitney Gravelle, President  
Bay Mills Indian Community



## Peninsula Fiber Network, LLC

---

Mackinac Straits Corridor Authority  
Michael A. Nystrom, Chairman  
C/O MDOT: Attn. Ryan Mitchell  
425 W Ottawa  
Lansing, MI 48893

Enbridge Energy, Limited Partnership  
Attn: Vice President of US Operations, Liquid Pipelines  
7701 France Avenue South, Suite 600 – Centennial Lakes Park I  
Edina, MN 55435

April 22, 2021

Regarding: Peninsula Fiber Network, LLC Formal Request for Access to the Tunnel for Purpose of Placing Fiber Optic Cable between Michigan's Upper Peninsula and Michigan's Lower Peninsula

Dear Mackinac Straits Corridor Authority and Enbridge Energy, Limited Partnership,

As Peninsula Fiber Network, LLC ("PFN") has discussed with representatives of each of your organizations, PFN desires to formally continue discussions with both Mackinac Straits Corridor Authority ("MSCA") and Enbridge Energy, Limited Partnership ("Enbridge") for the purpose of PFN placing fiber optic cable within the Great Lakes Tunnel Project ("Tunnel"). This project will allow PFN to place high count fiber optic cable within the Tunnel in order to provide a low latency, diverse fiber connection between Michigan's peninsulas to better serve and protect the people and businesses of Michigan. Additionally, PFN plans to offer access to these fibers to other parties (including the State of Michigan) for their 21<sup>st</sup> Century data and communication needs. The only fiber optic cable currently connecting Michigan's Upper and Lower peninsulas is on the Mackinac Bridge. As a result, there is no route redundancy between these two areas creating a significant and critical failure point in the Michigan data and telecommunications infrastructure.



In compliance with paragraph 2 of Schedule 1 – Third-Party Utility Access of the Tunnel Agreement between MSCA and Enbridge dated December 19, 2018, PFN provides the following information:

- i) a summary of the Prospective Third-Party's use of the Tunnel for a Utility;

RESPONSE: PFN plans to place fiber optic cable and a utility rack in the area designated by Enbridge within the Tunnel. This fiber will be used for providing PFN with a redundant fiber optic connection between Michigan's two peninsulas. This will be used in part to enhance the reliability of the State of Michigan's Next Generation 9-1-1 network currently provided by PFN. Further, PFN plans to install capacity for other providers (which can include the State of Michigan) to have a second low latency high-capacity connection across the Straits Corridor.

- ii) information, including but not limited to engineering schematics, that identify the size of the proposed Utility and requirements (e.g., anchoring) for placement of the proposed Utility in the Tunnel;

RESPONSE: Attached are PFN's preliminary drawing and engineering schematics for PFN's proposed use of the Tunnel.

- iii) maintenance and inspection requirements for the proposed Utility, including frequency and the free space required in proximity to the Utility to perform such maintenance and inspection;

RESPONSE: Unless the fiber or related racks are damaged by another party, no maintenance on the fiber or the racks is expected to occur within the Tunnel. If repairs are needed for whatever purposes, the free space required in proximity to the fiber and related racks for such maintenance will be no greater than the free space needed for original installation. PFN will want to make a visual inspection of the fiber and related racks in the Tunnel at least once a year.

- iv) identification of all Federal or State regulatory requirements pertaining to the placement of the Utility in the Tunnel:

RESPONSE: PFN has made the appropriate inquiries and is unaware of any additional Federal or State regulatory requirement that it will need to comply with pertaining to the placement of fiber or related racks in the Tunnel.

- v) the length of the period for which access is sought;

RESPONSE: PFN is seeking access to the Tunnel for placement of fiber and related rack for the useful life of the Tunnel.

- vi) documentation that the Third-Party carries or will carry Insurance Policies that comply with Schedule 2 – Insurance Specifications (pages 57 and 58 of afore mentioned Tunnel Agreement); and

RESPONSE: PFN currently has the attached insurance levels in place, which complies with the Insurance Specification outline in the Tunnel agreement. PFN commits to continuing to have in place at least this level of insurance for the length of time PFN's fiber and related racks within the Tunnel are used to transmit data and communication signals between Michigan's Peninsulas. Additionally, PFN will required any contractor and subcontractor that works either on construction, maintenance or inspection of this fiber and related rack to have at least this level of insurance in place.

- vii) other information requested by the Authority or Enbridge

RESPONSE: PFN is not aware of any other information requested by the Authority (MSCA) or Enbridge.

PFN looks forward to reaching the appropriate agreements with MSCA and Enbridge for the placement and operations of fiber optic and related racks in the Tunnel for data and communication services. If MSCA or Enbridge has any questions about the above provided information or needs additional information or has other concerns regarding this request, please contact me at (906)-226-2010 or [srandall@pfnllc.net](mailto:srandall@pfnllc.net)

Respectfully.



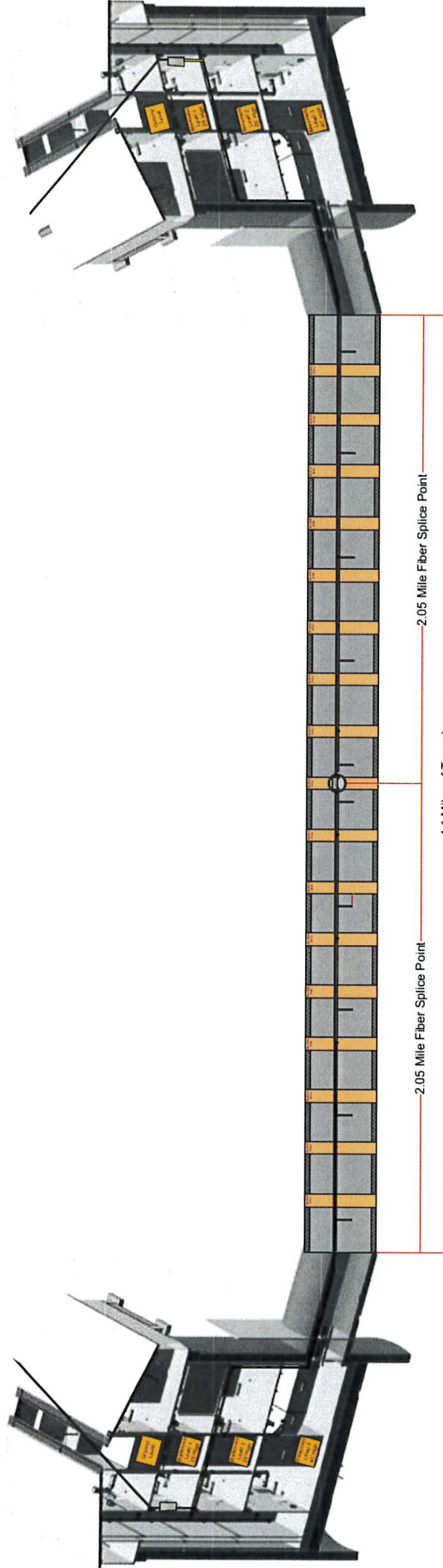
Mr. R. Scott Randall  
General Manager  
Peninsula Fiber Network, LLC

attachments

# PFN Tunnel Project (20-1.8)

North Portal

South Portal



Location:	PFN Project
Edited:	12/8/2020
Page Size:	11" x 17"
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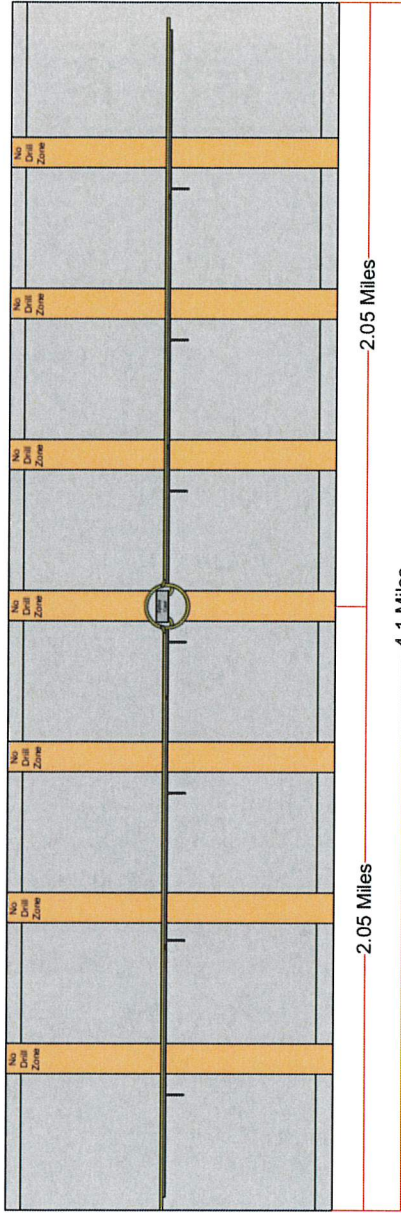
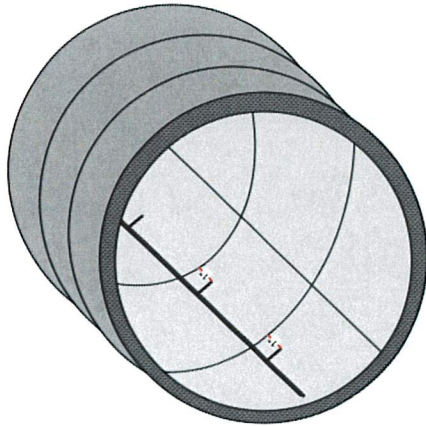
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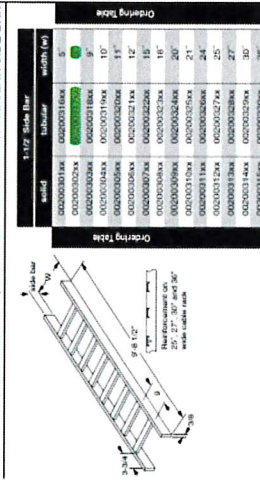
# PFN Tunnel Project (20-1.9)

- Tunnel Specs**
- 4.1 mile tunnel
  - 20' 10" diameter
  - 1" 1" thick concrete walls
  - 1' on each side of seam is a no drill zone

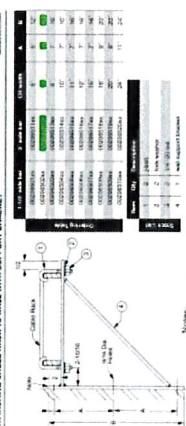
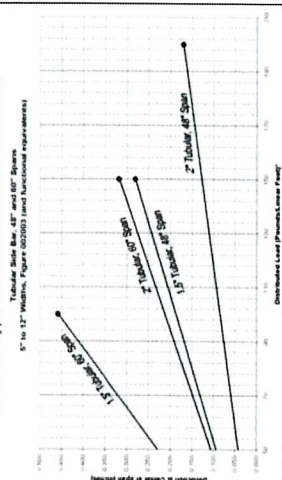


- Cable Rack Specs**
- Manufacturer: Newton
  - Part #: 0020031730
  - Construction: 1.5" Tubular
  - Width: 6"
  - Length: 9' 8.5"
  - Weight: 17 Pounds
  - Support: Every 96" (8')
- OSP Fiber Specs**
- Qty: (2) 288 Fibers
  - Protection: Non-armored
  - OD: 78"
  - Weight: .172 lbs./foot

## CABLE RACK, CHANNEL TYPE, WITH 1-1/2" & 2" SOLID OR TUBULAR SIDE BAR



## Channel Type Cable Rack Deflection Chart



## Channel Type Cable Rack Capacity, 48" Span

Cable Rack Width (Inches)	2.0 inch Solid Side Bar Load*	1.5 inch Solid Side Bar Load*	1.5 inch Tubular Side Bar Load*
5	375	200	250
6	375	200	250
7	375	200	250
8	375	200	250
9	375	200	250
10	375	200	250
11	375	200	250
12	375	200	250
13	375	200	250
14	375	200	250
15	375	200	250
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28	375	200	250
29	375	200	250
30	375	200	250
31	375	200	250
32	375	200	250
33	375	200	250
34	375	200	250
35	375	200	250
36	375	200	250

\*Load is in pounds per linear foot of cable rack.

## Self-threading Anchors — SPECIFIED FOR ANCHORAGE INTO CONCRETE

The LDT anchor is a high performance anchor that cuts its own threads into concrete.

Anchor bodies are made of hardened carbon steel and zinc plated, Grade 5.

The anchor shall have a finished hex washer head with anti-rotation serrations to prevent anchor back-out. The head of the anchor is stamped with a length identification code for easy inspection.

The anchor shall be installed with carbide tipped hammer drill bits made in accordance to ANSI B12.15-1994.

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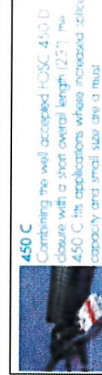
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**450 C**

Combining the well accepted H-SC 4x3 D closure with a short overall length (23") the 450 C is the applications where increased splice capacity and small size are a must.

- 6 cable entry ports, each with multicable capability
- 192 single fiber/864 multi splice capacity
- 23" long by 11.5" diameter
- Capacity of up to 16 drop cables in addition to a feed-through cable
- Wide-style splice tray
- Accessories available for a wide variety of applications
- Field applicable to the 4500 size

Accessories available for a wide variety of applications

Field applicable to the 4500 size

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Location:	PFN Project
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/26/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Olivier-VanDyk Insurance Agency 2780 44th Street SW Wyoming MI 49519	<b>CONTACT NAME:</b> Sarah Jonker <b>PHONE (A/C, No, Ext):</b> 616-454-0800 <b>FAX (A/C, No):</b> 616-454-7100 <b>E-MAIL ADDRESS:</b> certificates@ovdinsurance.com														
<b>INSURED</b> Peninsula Fiber Network LLC 1901 W Ridge Street Suite 2 Marquette MI 49855	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A : Great Northern Insurance Company</td> <td>20303</td> </tr> <tr> <td>INSURER B : Federal Insurance Company</td> <td>20281</td> </tr> <tr> <td>INSURER C : ACE American Insurance Co</td> <td>22667</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Great Northern Insurance Company	20303	INSURER B : Federal Insurance Company	20281	INSURER C : ACE American Insurance Co	22667	INSURER D :		INSURER E :		INSURER F :	
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INSURER F :															

## COVERAGES

**CERTIFICATE NUMBER:** 301489654

**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	36054226	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	73612898	1/1/2021	1/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	Y	79896734	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Professional Tech E&O Liability			D95204776	1/1/2021	1/1/2022	Per Claim Limit: 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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Enbridge Energy, Limited Partnership  
7701 France Avenue South  
Suite 600 – Centennial Lakes Park I  
Edina, MN 55435  
U.S.

February 26, 2021

Mackinac Straits Corridor Authority  
C/O Mr. Ryan Mitchell  
Innovative Contracting Manager  
Van Wagoner Building  
425 W. Ottawa Street  
P.O. Box 30050  
Lansing, MI 48909

Re: Notification of Prospective Third-Party

Dear Chairman Nystrom and Board Member England:

I am writing to notify you in accordance with Paragraph 1, Schedule 1 to the Tunnel Agreement that on February 19, 2021, Enbridge was contacted by a third-party that expressed interest about obtaining access to the Tunnel for purposes of housing that third-party's fiber optic cables. Enbridge intends to have further discussions in the near future with the prospective third-party about the possibility of accommodating the fiber optic cables within the Tunnel.

I am also writing, in accordance with Paragraph 1, Schedule 1, to provide the Mackinac Straits Corridor Authority ("Authority") with the opportunity to participate in all further discussions and/or correspondence with the prospective third-party. Unless you advise otherwise, I intend to invite Ryan Mitchell, as the Authority's representative, to jointly engage in all forthcoming discussions with the third-party. I will also copy Ryan Mitchell on all future correspondence with the prospective third-party.

Please let me know if you have any questions or require any further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Bagale'.

Michael Bagale  
Project Director  
Great Lakes Tunnel Project

cc:  
Lisa Wilson - Associate General Counsel;  
Peter Holran - Director State Gov Relations;

## **Mackinac Straits Corridor Authority**

### **June 2, 2021 Virtual Public Meeting Written Public Comments**

#### **Comment 1 | Submitted by James Olson**

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June 2, 2021 The Mackinac Straits Corridor Authority Public Comment re Lack of Authorizations under Public Trust Law and Statutes of Michigan for Tunnel Project Dear Honorable Members of the Authority. Some of you have been newly appointed since 2019. For background, please note that FLOW and many organizations, appeared and testified before this Authority on Friday, March 6, 2020. At that time, FLOW submitted a legal analysis and comment, dated March 5, 2020, and on March 6, 2020 made an oral presentation to the Authority that is part of the record in this matter. A copy of the written submission is linked and incorporated by reference from the Authority's records. I urge you to reread and/or read if you are newly appointed. The submission raises serious and substantial questions of law over the lack of authorizations required before the Authority and Enbridge or its contractors can proceed with any use, construction, alternation, or other actions. Without waiving the several points contained in FLOW's analysis and comments, today, I want to underscore the fact and law that the DNR Easement, the Assignment from you to Enbridge, and the Tunnel Agreement provisions calling for a 99-year lease have not been authorized under the rule of law of the public trust doctrine: 1. These documents are subject to the GLSLA, 324.32502-32508 and rules, but to date the agreements and conveyance documents have not been authorized under the GLSLA; 2. The DNR Tunnel right of way or Easement purports to be authorized under Act 10, now MCL 324.2129, for a public utility easement. However, the DNR has never authorized it based on the required findings under the public trust doctrine, an absolute necessity based on the position of the State, AG Nessel, and DNR in the Ingham County cases: Nessel v Enbridge; and State Governor and DNR Director v Enbridge. Until this authority is obtained by Enbridge, no contracts should be signed, no monies spent, and no construction commenced; to do so, would be at MSCA's and Enbridge's own risk. For this reason, you, the members of MSCA, are requested, respectfully, to ask for an Opinion of Attorney General Dana Nessel, on the serious question of the lack of required authorization of the 2018 Easement, the Assignment of Easement, and the Tunnel Agreement/99-Year Lease Agreement for occupancy and use of the State's sovereign public trust bottomlands and waters of the Great Lakes. Thank you. Should you have any questions, or your AG staff have questions, we remain available to discuss the same. Sincerely yours, James Olson President and Legal Advisor For Love of Water FLOW [jim@flowforwater.org](mailto:jim@flowforwater.org)

#### **Comment 2 | Submitted by James Olson**

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March 5, 2020 The Mackinac Straits Corridor Authority and Board Members Mr. Michael Nystrom, Chairman Michigan Infrastructure and Transportation Association 2937 Atrium Drive Okemos, MI 48864 [nystromm@michigan.gov](mailto:nystromm@michigan.gov) Mr. James R. Richardson, Member PM Power Group, Inc. P. O. Box 695 29639 Willow Road White Pine, MI 49971 [Jr.richardson@pmpowergroup.com](mailto:Jr.richardson@pmpowergroup.com) Mackinac Straits Corridor Authority DNR-StraitsTunnelComment@michigan.gov VIA ELECTRONIC SUBMISSION RE: THE MACKINAC STRAITS CORRIDOR AUTHORITY REQUIREMENTS FOR AUTHORIZATION AND APPROVAL OF THE 2018 DNR GREAT LAKES BOTTOMLANDS EASEMENT TO THE MSCA, THE ASSIGNMENT OF 2018 DNR EASEMENT TO ENBRIDGE, THE LEASE OF PUBLIC TRUST SOILS BENEATH THE WATERS OF THE GREAT LAKES FOR THE USE AND OCCUPANCY BY ENBRIDGE OF THE CORRIDOR TUNNEL AND NEW ENBRIDGE LINE 5 PIPELINE IN THE STRAITS OF MACKINAC Dear Members of the Mackinac Straits Corridor Authority: For Love of Water ("FLOW")<sup>1</sup> submits this letter to assist the Mackinac Straits Corridor Authority ("MSCA") in complying with the legal requirements necessary to authorize and approve the proposed Corridor and Tunnel, together with easement, assignment of easement, and long-term lease and occupancy of the public trust bottomlands of the Great Lakes for the location and private use and purpose of the corridor to locate, construct, and operate a proposed new Line 5 30-inch pipeline in the soils, <sup>1</sup> FLOW is an independent law and policy center dedicated to the protection of water,



health, and communities in the Great Lakes Basin, with offices in Traverse City, Michigan. Since 2013, FLOW has investigated, researched, and published a dozen reports addressing the risks of the 67-year-old Line 5, existing alternatives to Line 5, worst-case scenarios, and economic damage and loss, and violations of the state's agreement with Enbridge and state laws, including the strict protections for the public trust waters and bottomlands of the Straits of Mackinac, Lake Huron, and Lake Michigan. All of these reports are available for viewing on FLOW's website, [www.forloveofwater.org](http://www.forloveofwater.org). 153 ½ EAST FRONT STREET, STE 203C TRAVERSE CITY, MI 49684 231.944.1568 FLOWFORWATER.ORG Mr. Anthony England, Member University of Michigan – Dearborn 2180 HPEC 4901 Evergreen Road Dearborn, MI 48128 [england@umich.edu](mailto:england@umich.edu)

2 bottomlands beneath the waters of the Straits of Mackinac.2 Based on our research and analysis, FLOW urges the MSCA to halt and otherwise postpone any further implementation of the Tunnel Corridor and Tunnel Pipeline Line 5 project unless and until the authorizations and approvals required by public trust law, both common law and statute, have been applied for and obtained.

1. The Second Agreement, October 2018 The Second Agreement between the State and Enbridge called on the parties to negotiate, among other things, an agreement for a corridor tunnel and new Line 5 pipeline in and through the soils and bottomlands beneath the waters of the Straits of Mackinac. Paragraph G contemplated that the Mackinac Bridge Authority ("MBA") and/or MSCA would assist in providing all of the public land, ownership, lease, other agreements, and oversight of the tunnel and new pipeline for Enbridge, to be completed in 7 to 10 years. The Second Agreement also contemplated that the MSCA would provide a lease for 50 years for Enbridge to occupy and use the tunnel for its new proposed 30-inch diameter Tunnel Line 5 Pipeline. Specifically, the Second Agreement intended that the MSCA and/or Enbridge would be required to obtain all authorizations, approvals, and permits for the location, construction, and operation of the tunnel, and the new Tunnel Line 5 Pipeline: G. Further Agreements for a Straits Tunnel. The State has proposed that, together with housing the Line 5 Straits Replacement Segment, the Straits Tunnel could accommodate multiple utilities...The State and Enbridge agree to initiate discussions, as soon as practicable, to negotiate a public private partn

END OF PUBLIC COMMENT.